

STATE OF MICHIGAN
COURT OF APPEALS

PETE I. MATA, II and KAREN M. MATA,

Plaintiffs/Counterdefendants-
Appellees,

V

STEVEN GREKIN, D.O., STEVEN GREKIN,
D.O., P.C. a/k/a, d/b/a WARREN
DERMATOLOGY a/k/a, d/b/a DERMATOLOGY
INSTITUTE OF MICHIGAN,

Defendants/Counterplaintiffs-
Appellants.

UNPUBLISHED

March 10, 2005

No. 251039

Macomb Circuit Court

LC No. 02-004290-CZ

Before: Wilder, P.J., and Sawyer and White, JJ.

WILDER, P.J., *dissenting*

I respectfully dissent. Neither plaintiffs nor the majority identifies any provision of the contract between defendant and PPOM by which plaintiffs can be deemed third-party beneficiaries of the contract. MCL 600.1405 provides, in relevant part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

In *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999), our Supreme Court held that “section 1405 does not empower just any person who benefits from a contract to enforce it. Rather . . . a person is a third-party beneficiary of a contract only when the promisor undertakes an obligation “directly” to or for the person.”

Here, defendant did not undertake to accept an adjusted amount rather than the usual and customary rates/charges directly for plaintiff’s benefit. Instead, as the contract clearly states, defendant agreed with PPOM to accept the adjusted amount in consideration of being paid on the claim within seven days of the receipt of the claim by the insurer or third-party payor. Thus,

plaintiffs are only indirect beneficiaries of the contract who may not avoid their own contractual agreement to pay “*all* charges . . . from the date services are rendered” (emphasis added).

I would reverse.

/s/ Kurtis T. Wilder